

# Town: State ethics board looking into statements

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head in early October of that year, when DeLuca was offered a settlement by the Board of Selectmen.

At the time, Selectman Christopher Donato said he learned that "statements were made under oath" regarding allegations against DeLuca. He said he was not privy to any of the specifics, however at a later meeting he said some of the allegations may have dealt with overtime abuse. Donato did say, however, that as part of the settlement those allegations "would disappear."

During an executive session, normally closed to the public that was inadvertently broadcast over public access TV, Town Counsel Robert Troy elaborated on the allegations.

"People have made statements that, quite frankly, impose on the municipality a duty to investigate whether those statements are affirmed or not affirmed," he said.

The settlement was eventually pulled off the table, and DeLuca left the town when his contract expired in November. He has since been appointed the police chief in Cohasset.

The Clipper made a public records request for the transcripts of the statements on Oct. 7, 2009.

On Oct. 16, the town denied the request, saying that the "recorded information was not transcribed and is under the direction of special counsel."

The Clipper appealed to state Supervisor of Public Records Alan Cote, saying the town's denial was contrary to the public records law. That appeal was subsequently denied by Cote in a June 9, 2010 letter.

However, in a November 2010 memo, drafted in response to a request from Board of Selectmen Chairman Shawn Dahlen, Troy ruled that the transcripts were indeed public records.

In the memo, Troy addresses three main questions: Whether or not an individual member of the Board of Selectmen could examine the allegations made by town employees against another town employee, whether or not those records could be used as part of the evaluation of the town manager and whether or not the records were public.

Regarding the first two questions, Troy said that Duxbury's Town Manager Act gives control over personnel to the Town Manager.

"An individual member of the Board of Selectmen has no rights to review records that relate to matters that could be deemed personnel matters," Troy wrote.

However, in the memo Troy concluded that the materials requested by a certain member of the Board of Selectmen (not named in the memo) don't meet any of the public records exemptions relating to privacy and are, in fact, public documents. He also noted that the Board of Selectmen voted to terminate the investigation into the allegations against DeLuca, so the exemption regarding ongoing investigations does not apply.

The Clipper made a second public records request of the town, seeking transcripts of the statements made in the fall of 2009, on Dec. 6. The town has not yet responded formally to the request (state law requires a written response within 10 days), but Troy said that a phone call from the State

Ethics Commission created confusion.

"Since the date of my opinion ... we have been notified that the State Ethics Commission is conducting an investigation into the police department during the years 2007-2008," Troy said on Monday. He added that town employees may be subpoenaed to testify before the commission.

Because there is now an ongoing investigation, the transcripts may be subject to the investigatory exemption to the public records law. Troy said the decision rests with MacDonald as the town's custodian of records.

"The town is going to respond to the Clipper's request," Troy said.

David Giannotti, a spokesman for the Ethics Commission, said Monday afternoon he could not comment because of confidentiality rules.

## State ethics board eyes transcripts

### Town says state investigation may prevent release of documents

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The State Ethics Commission has opened an investigation into statements made

#### SPECIAL REPORT

by members of the Duxbury Police Department during the

departure of former Duxbury Police Chief Mark DeLuca, according to town officials.

In 2009, DeLuca was embroiled in a battle with the town after his contract was not renewed by Town Manager Richard MacDonald.

That dispute came to a

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